

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

J U D G M E N T

Manohar Lal

V/S

Chottey Khan @ Ralu

S.B. Civil First Appeal No.61/88
against the judgment and decree
dated 4.11.1987 passed by Shri
Ramesh Chandra Sharma Addl.
District Judge, Kishangarh-bas,
Alwar in Civil Suit No. 15/84.

Date of Judgment

:::

October 30th , 2006

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Ms. Shilpi Gupta on behalf of
Mr. R.K. Mathur for the appellant
Mr. Suresh Dhanwal on behalf of
Mr. Praveen Balwada for the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the
judgment and decree dated 4.11.1987 passed by the
learned Additional District Judge Kishgargarh-bas,
Alwar whereby the learned Judge has dismissed the
plaintiff's suit for specific performance.

Plaintiff respondent filed a suit for specific
performance of an agreement to sell Ex.1, with the
averments made in the plaint. The defendant contested

the suit and denied the averments made in the plaint. The trial court, on the basis of pleadings of the parties, framed following 5 issues including issue as regards relief:

1. Whether, on 21.1.82 the plaintiff agreed to purchase half of the agricultural field No. 247 from the defendant and while paying Rs. 10,000/- and agreeing to pay Rs. 2000/- at the time of registry executed an agreement?

2. Whether the plaintiff was always ready and willing to get the registry done and the defendant failed to perform his part of the contract?

3. Whether the plaintiff was entitled to the registration done after paying Rs. 2000/-?

4. Whether the suit land is the agricultural land and the defendant has been in possession of the land from very beginning and that being so this court has no jurisdiction to hear the suit?

5. Relief?

At the conclusion of trial and on consideration of evidence on record, the trial court came to a finding that there existed a well in the suit land and since the cost of the said land was much higher as compared to the cost at which the defendant allegedly agreed to sell the said land, therefore, it appears to be highly unnatural that defendant would agree to sell the same

for a consideration of Rs. 12,000/- only. The trial court further came to a finding that defendant is an illiterate person and therefore, possibility of his being misused by the plaintiff while extending loan and obtaining his signature cannot be ruled out. In the opinion of trial court, no question of land having been agreed to sell does arise because the suit land was already mortgaged with the Bank. On these premises, the trial court held that defendant did not execute an agreement to sell (Ex.1). The trial court, having held that the plaintiff extended a loan of Rs. 10,000/- to the defendant, passed a money decree.

On a bare reading of the impugned judgment it appears that the trial court has not recorded any finding on the issue whether the plaintiff was always ready and willing to fulfill his part of the contract by getting the sale deed registered after payment of Rs. 2000/-. It has also not decided the issue whether the defendant has been in continuous possession of the suit land. To decide the controversy it would be appropriate to refer the provisions of Rule 2 of Order 14 CPC. Sub Rule 2 of Order came to be amended by the Code of Civil Procedure (Amendment) Act, 1976 (104 of

1976). Prior to the amendment, Order 14 Rule 2 provided that where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first and for that purpose, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. After amendment, the provision reads as under:

"R.2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court,
or

(b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the unamended Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. In the light of comparative reading of the said provision prior to amendment and after amendment, the Punjab & Haryana High Court in Hardwari Lal Vs. Pohkar Mal (AIR 1989 P&H 230) has held as under:

"....In the amended provision, there is a mandate to the court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion upon the Court that if it is of opinion that the case or any part thereof may be disposed of "on an issue of law only," it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force."

It is thus emphatically clear that in view of the amended provision of O.14 R.2 CPC, it is mandatory for the trial court to pronounce judgment on all the issues. Here, in the instant case, the trial court has kept confined the judgment only on issue No.1 and did not record any finding on remaining issues.

So far as finding of the trial court on issue No.1 is concerned, it must be observed that if this court comes to a conclusion that finding on issue No.1 is perverse and is liable to be reversed, it would not be possible for this court to pass an effective judgment in the absence of there being any finding on other issues.

Thus, keeping in view the provisions of Order 14 Rule 2 CPC, the matter deserves to be remanded back to the trial court to pronounce judgment all the issues.

In the result, the appeal is allowed. The case is remanded back to the trial court with the direction to pronounce judgment on all the issues. Parties are directed to appear before the trial court on 27.11.2006.

(Khem Chand Sharma), J.

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